

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

SYRIS T. BIRKLEY,

Plaintiff,

v.

Case No. 22-cv-1313-pp
Appeal No. 24-2261

KEVIN EADE, *et al.*,

Defendants.

**ORDER DENYING AS MOOT PLAINTIFF'S FIRST MOTION FOR LEAVE TO
APPEAL WITHOUT PREPAYING FILING FEE (DKT. NO. 53) AND GRANTING
PLAINTIFF'S SECOND MOTION FOR LEAVE TO APPEAL WITHOUT
PREPAYING FILING FEE (DKT. NO. 56)**

On July 9, 2024, this court granted in part the defendants' motions to dismiss, relinquished jurisdiction over the plaintiff's state law claims, dismissed this case and entered judgment against the plaintiff. Dkt. Nos. 49, 50. Two weeks later, the plaintiff filed two notices of appeal, dkt. nos. 51, 54, and two motions for leave to appeal without prepaying the appellate filing fee, dkts. nos. 53, 56. The plaintiff was incarcerated at the Milwaukee County Jail when he filed the complaint, but is no longer incarcerated.

The Federal Rules of Appellate Procedure allow a party in a district court case who wants to appeal without prepaying the appellate filing fee to file a motion with an affidavit that: (1) shows the party's inability to pay or to give security for fees and costs; (2) claims an entitlement to relief; and (3) states the issues that the party intends to present on appeal. Fed. R. App. P. 24(a)(1). If the district court allowed the party to proceed without prepaying the filing fee,

the party may appeal without prepaying the filing fee unless the district court certifies that the party has not appealed in good faith or that the party is not otherwise entitled to proceed without prepaying the filing fee. Fed. R. App. P. 24(a)(3).

The threshold for proceeding without prepaying the filing fee on appeal is low. This court granted the plaintiff leave to proceed without prepaying the filing fee at the district court level. Dkt. No. 14. That means that the plaintiff may proceed on appeal without prepaying the filing fee unless the court certifies that his appeal is taken in bad faith. An appeal is taken in bad faith when no reasonable person could suppose that the claim has merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).


While the court found that the plaintiff's amended complaint failed to state a claim for violation of his constitutional rights, it will not certify that the plaintiff is proceeding in bad faith.

The court **DENIES AS MOOT** the plaintiff's first motion for leave to appeal without prepaying the appellate filing fee. Dkt. No. 53.

The court **GRANTS** the plaintiff's second motion for leave to appeal without prepaying the appellate filing fee. Dkt. No. 56.

Dated in Milwaukee, Wisconsin this 26th day of July, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'P. Pepper', written over a horizontal line.

HON. PAMELA PEPPER
Chief United States District Judge